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### MISCELLANY.

**Rehearings.**—In the following cases petitions for rehearings are pending: *Jeter v. Vinton-Roanoke Water Co.*, 76 S. E. 921; *Adams v. Booker*, 77 S. E. 611; *Colonial Coal & Coke Co. v. Ream*, 77 S. E. 508; *Norfolk, etc., R. Co. v. Interstate R. Co. (Ark.)*, 76 S. E. 940.

**Self-Defense against Burglars.**—Some recent references to the subject in the press indicate that many members of the public feel some doubt as to the precise extent to which the law will uphold them in using violence to defeat or capture a burglar. It cannot be said that the law is quite clear on the point. In defense of his person or of property actually in his possession a man may use such violence as is reasonably necessary; it varies, of course, with the circumstances (*Regina v. Rose*, 15 Cox 540). But he must not use unnecessary violence for mere purposes of revenge after danger to either has passed (*Regina v. Driscoll, C. & M.* 214). A peaceful trespasser must be requested to depart in peace, and only on his refusal can force be used to remove him, but a violent or an armed trespasser can be removed without such a request (*Green v. Goddard*, 2 Salk. 641). As a general rule, however, it is not lawful to kill even a person assaulting one or stealing one's goods; unless one's life is in danger, such an act is at best manslaughter (*Osborn v. Veitch*, 1 F. & F. 317). Possibly in the defense of one's home the use of fire-arms is justifiable, even if no violence to the person is threatened, but this is very doubtful. Possibly, too, since burglary is a felony, a burglar who resists capture is a felon attempting to escape from arrest—whom it is lawful for his gaoler to kill (*Rex v. Leonin* [1221] in *Maitland's Select Pleas* 85). It has, indeed, been said by one learned judge that an attack upon one's house justifies the same degree of violence in self-defense as an attack upon one's person, for "a man's house is his castle" (per *Holroyd, J.*, in *Rex v. Meade*, 1 Lewin 184). But this opinion is doubtful law.—*London Law Journal*.

**Note.**—According to a number of American decisions it would seem that one will be justifiable in committing a homicide under a reasonable apprehension that the deceased intended to commit burglary. *State v. Moore*, 31 Conn. 479, 83 Am. Dec. 159; *McPherson v. State*, 22 Ga. 478.

One has a right to kill a burglar or thief or one who is at the time committing a felony by attempting to break into his house. *Leach v. Commonwealth*, 33 Ky. Law Rep. 1016, 112 S. W. 595.

One killing a burglar is entitled to the benefit of § 71 of the New Jersey Crimes Act, exonerating the slaying of one attempting to commit burglary, though the burglar was at the time attempting to escape from a window. In re *Charge to Essex Co. Grand Jury*, 7 N. J. L. J. 9.

If one violently and forcibly breaks into the dwelling house of

another and immediately assaults with a weapon an inmate thereof, the householder may, without more, regard the entry as burglarious, and may justifiably kill the assailant, if he does so in good faith under the honest belief that it is necessary to prevent the accomplishment of the unlawful purpose for which the entry was apparently made. If, on the other hand, one so breaks and enters another's house, and it is, if he does so, manifest that he does not meditate or intend violence or the commission of any crime, it is not justifiable to kill him, merely because of his unlawful entry. *Horton v. State*, 110 Ga. 740, 35 S. E. 659.

In some states it is held that one may be justified in killing to prevent his habitation from being entered through violence or surprise by a person attempting to enter in a riotous manner, though such person has no actual or apparent intent of committing a felony therein, but intends merely to commit a misdemeanor upon the slayer or some person dwelling in the habitation. *Brown v. State*, 106 Ga. 673, 32 S. E. 851. See, also, *Smith v. State*, 106 Ga. 673, 32 S. E. 851; *People v. Walsh*, 43 Cal. 447.

**Temporary Releases from Prison.**—The expected measure for giving the Home Secretary power to deal with hunger-strikers in a more satisfactory way than is at present possible has at last been introduced into the House of Commons; its object is described as being "to provide for the temporary discharge of prisoners whose further detention in prison is undesirable on account of the condition of their health." As has been generally anticipated, the new Bill proposes to give the Secretary of State power to make an order for the temporary discharge of any person detained in prison, if he is satisfied that by reason of the condition of a prisoner's health, it is undesirable to detain him in prison, but that, such condition of health being due in whole or in part to the prisoner's own conduct in prison, it is desirable that his release should be temporary and conditional only. (Clause 1.) Clause 4 deals with the case of prisoners not under sentence, i. e., prisoners under remand or committed for trial by justices, and provides that in their case "the order shall contain conditions requiring the attendance of the prisoner at any further proceedings on his case at which his presence may be required." We are glad to see that the Home Secretary, having abandoned his unfounded claim to interfere with the jurisdiction of justices over the release of prisoners under remand, has adopted the suggestion made in these columns that he should regularize his position by taking powers under his new Bill to grant such releases in exceptional cases. In view, however, of the fact that a questionable claim was for a time set up and acted on to exercise the powers now to be conferred without legal authority, the Home Secretary's retreat from his doubtful position ought to be marked by the insertion in the Bill of an indemnity for acts already done which may hereafter be declared by any Court of Law to have been illegal at the date when they were committed.—*London Law Journal*, March 29, 1913.